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*Kevin L. Smith*

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tax court

ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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STATE OF INDIANA,  
Appellee-Plaintiff.

**August 27, 2008**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Willie Anderson appeals his sentence following his conviction on three counts of Robbery, each as a Class B felony. Anderson raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and Anderson's character.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

The facts relevant to this appeal were stated in our recent memorandum decision in Mallard v. State, No. 71A03-0802-CR-39 (Ind. Ct. App. Aug. 11, 2008):

Between April 27 and April 30, 2008, the following venues in South Bend and Mishawaka were robbed: the 7-Eleven on Lincoln Way West, the 7-Eleven on Eddy Street, the Council Oaks Tobacco Discount Store on Portage, the Speedway gas station on S.R. 933, Low Bob's Discount Tobacco store on Lincoln Way East, the Speedway gas station on Ireland Street, and the Days Inn on S.R. 933. In each instance, Willie Anderson entered the venues and conducted the robberies then fled in a minivan driven by Mallard. With regard to the Days Inn robbery, Mallard entered the motel before Anderson and asked for "Mr. Smith." Transcript at 281-82. Mallard left after Helen Simpson, the front desk supervisor, told him that no one staying at the hotel had that name. Anderson then entered and robbed the motel.

Anderson used a sawed-off shotgun, provided by Mallard, to commit all of the robberies. He wore a blue hoody during the April 27 robberies. After each robbery, Anderson and Mallard split the proceeds, with Mallard usually receiving more than half.

In the course of investigating the robberies, the St. Joseph County Police Department and the South Bend Police Department disseminated reports identifying as suspects two black males traveling in a beige Pontiac minivan. The reports contained a photo of a van similar to the one that witnesses had described as being used in the robberies. Galen Pelletier, a South Bend police officer, observed a minivan resembling that description parked on Van Buren Street. While watching that minivan, Pelletier saw another minivan, which also fit the description sent out by the police

department. The second minivan paused for several seconds before proceeding through the intersection and passing Pelletier. Pelletier saw two black males in the vehicle. The passenger was wearing a blue hoody and was slouching down in the seat.

At that point, Pelletier made a traffic stop. Mallard stopped and got out of the vehicle. While Officer Pelletier was waiting for backup, Mallard jumped back into the van, fled the scene, and crashed the van into a fence. Mallard then fled on foot. Officer Pelletier found Anderson in the van with a sawed-off shotgun between his legs. Other officers searched the area and found Mallard underneath a car on a nearby street. Mallard again attempted to flee, but officers caught and handcuffed him.

After he was apprehended, Anderson informed the police of his involvement in the robberies, along with a written confession.

On May 4, 2006, the State charged Anderson with seven counts of robbery, six as a Class B felony and one as a Class C felony. On October 25, Anderson pleaded guilty to three of the Class B felony counts, and in exchange the State dismissed the remaining charges. The guilty plea also capped any executed sentence at thirty years, on the condition that Anderson testified truthfully against Mallard at Mallard's trial. Anderson subsequently testified against Mallard, and Mallard was convicted.

At Anderson's ensuing sentencing hearing, the trial court ordered him to serve ten years for each conviction of robbery, as a Class B felony, to be served consecutively. In so ordering, the court stated, in relevant part:

[Y]ou testified in the case of State of Indiana versus Donald Mallard . . . [a]nd without your testimony, there is absolutely no way, at least from the evidence that I heard in that case, that the State could have convicted Mr. Mallard.

And so you pretty much . . . although you were charged with six Class B Felonies and one Class C Felony, the testimony you gave at that trial last Thursday . . . I mean, you pretty much laid it all out for the jury and straight-up said that this is what happened, and you and Mr. Mallard were

involved in seven armed robberies, and each time you went in to conduct those robberies.

And I just had this kind of feeling that as long as Mr. Mallard was making sure you had enough money to get the cocaine you needed at the time, this was going to keep on going. And you didn't really care how much money Mr. Mallard got.

I think you testified that he got more than you in each of the cases, but you had enough to satisfy what you needed.

It is true, I guess I do take into consideration the fact that you did testify, your testimony seemed truthful. The State relied on your testimony to convict the co-defendant in this case. And as a result, you've taken responsibility for your actions.

On the other hand, you too, faced the same sentencing range of anywhere from six years to one hundred and twenty-eight years, that Mr. Mallard faced.

And you entered into a plea agreement with the State, that although at least in trial in Mr. Mallard's case admitted in front of the jury that you were guilty of seven armed robberies, you limited your exposure to pleading guilty to three of those robberies.

And further, you limited your exposure to thirty years as a maximum sentence. Where if we were to just take those three offenses, your exposure and possible sentences you could have received would have really have been from six years to sixty years.

So you limited the total amount of time by pleading guilty to three out of the seven, and in the three you did plead guilty you got a deal from the State in exchange for your testimony to about half of what the maximum could have been anyway.

And so I think that those things sort of equal each other out.

As it relates to the sentencing with respect to what's left here, the thing that really sticks out in my mind: Number one, yes, you do not have . . . a history of committing violent offenses.

But you do have a history. You have a history that goes back to 19[93,] when you were nineteen years of age.

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And it has been pretty continuous from when you were nineteen in 1993, to the time you were thirty-one when you were arrested in this case[, including retail fraud, breaking and entering an occupied dwelling with intent, probation violations, uttering and publishing, burglary, resisting and obstructing, and driving without a license.]

And so it looks like . . . you have three prior misdemeanor convictions and five felony convictions. One of those felony convictions consisting of four separate felonies. And you were on parole in the State of Michigan in a Cass County case at the time you committed these offenses.

So it seems to me first of all with respect to the concurrent[] and consecutive nature of the offenses, I see a couple of things.

There are aggravating factors, namely the criminal history that I've gone through.

And further, there were three independent separate offenses, each of which you went in to these establishments with this sawed-off shotgun, the possession of which is a felony in itself. There were three crimes of violence.

And so in using the old type of language, if I were to run those concurrent[] with each other, it would essentially suspend two of them or depreciate the seriousness of two of the offenses, because they would all be rolled into one.

And so based upon what I've seen as far as aggravating and mitigating, particularly the criminal history and the separate nature of the offenses, the sentence on Count I, Count II and Count II, is each ten years.

Those sentences will be served consecutively for an aggregate sentence of thirty years.

Sentencing Transcript at 9-14. This appeal ensued.

## **DISCUSSION AND DECISION**

Anderson argues on appeal that his thirty-year sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within

its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration in original).

Here, Anderson appeals the sentence imposed after his three convictions for robbery, each as a Class B felony. Indiana Code Section 35-50-2-5 provides that a person who commits a Class B felony “shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” Anderson received the advisory sentence of ten years on each conviction, which the trial court ordered to be served consecutively. In ordering that sentence, the trial court recognized the nature and circumstances of the crimes, as well as Anderson’s lengthy criminal history, as aggravating factors. In mitigation, the court recognized Anderson’s acceptance of responsibility and his valuable testimony against Mallard.

Anderson's sentence is not inappropriate with regard to the nature of his offenses. Anderson committed seven robberies armed with a sawed-off shotgun. Those seven robberies occurred over the period of five days, and Anderson's principle reason for involvement in the robberies was to obtain funds with which he could purchase cocaine. Anderson asserts that there was no evidence that he used the shotgun "in a manner to endanger" another person, Appellant's Brief at 3, but that argument belies the very nature of possessing such a weapon during a robbery.

Anderson's sentence also is not inappropriate with regard to his character. Anderson has a lengthy criminal history dating back fifteen years. Further, he was on parole at the time he committed the current acts. Nonetheless, he accepted responsibility for his conduct and provided valuable testimony for the State against Mallard. As such, Anderson's criminal history is balanced by his conduct in this case. Accordingly, the advisory sentence on each conviction was not inappropriate. And because each act was a separate offense—and only three of the seven armed robberies to which Anderson confessed—it was not inappropriate for the trial court to order those three convictions to be served consecutively.

Affirmed.

MAY, J., and ROBB, J., concur.